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Testimony of Shirley Bergert¹
Before the Government Administration And Elections Committee
Regarding S.B. No. 27
An Act Transitioning the Regulations Of Connecticut State Agencies to an Online
Format
March 2, 2012

Recommended action: Approve bill with additional provisions to ensure ready public access to agency regulations.

We strongly support the move to electronic publication of state regulations. This has the potential to create an up-to-date single source reporter for the public of law governing the action of state agencies, including some regulations not currently readily accessible, and to allow the public to track the status of proposed regulations.

Public availability of regulations is not just a theoretic good relating to open government — state regulations govern day-to-day activities affecting the public, for example they provide consumer protections, contracting parameters, guide agency program administration and appeals, govern professional licensing, safety practices, hunting, park operations and utility rate setting, set minimum standards for building construction, and much more.

In support of the goal of modernizing publication of regulations to ensure ready public access to timely information, we make the following suggestions for modification of the proposal to ensure basic standards are clearly articulated in the public act:

I. An electronic reporter should be designed as an up-to-date public resource that is easy to access and use:

A. An electronic publication should be maintained as an up-to-date system (assuming short delays in posting vs. the current reporter system which may be a year out of date). The current official regulation reporter, Regulations of Connecticut State Agencies (RCSA), cannot be relied upon to be current and updates can be difficult to find in the CT Law Journal where notice is published.

¹ Connecticut Legal Services represents low income state residents in civil legal matters. A substantial portion of our practice involves administrative law. We are familiar with the current regulation reporting system and the difficulties of timely accessing effective and proposed regulations.

B. An electronic publication should be readily searchable and include a table of contents and index. This will help overcome the numbering system in the current reporter that makes it difficult to identify and locate relevant regulations. RCSA is arcane in numbering and structure, difficult to search, and does not have a usable table of contents or index.

II. An electronic publication of state regulations should include all state regulations governing state agencies and agency action.

A. All Department of Social Services (DSS) regulations should be in an electronic publication of state regulations. The legislature gave DSS special dispensation to self-publish its lengthy policy manuals (Uniform Policy Manual) with regulations governing the assistance programs DSS administers, without publishing these regulations in the official reporter, RCSA. (Conn. Gen. Stat. § 17b-10). These manuals are only available from DSS, a major barrier to the public in locating regulations relevant to DSS programs. Because the manuals are not published in RCSA, other legal reporters (*e.g.*, Westlaw) do not publish them, adding to the access problem. These regulations govern not only agency program parameters and administration, but they also define appeal procedures, including the short deadlines by which appeals may be filed to challenge agency error. To the extent the length was the basis of not including these regulations in RCSA, this is not a problem with an electronic publication.

B. Any proposed regulations under which an agency has authority to act should be included in an electronic publication of regulations. The legislature has often given DSS authority to publish proposed regulations and operate pursuant to those regulations while they are pending review by the Attorney General and approval by the legislature's Regulations Review committee. (Conn. Gen. Stat. § 17b-10 provides authority for DSS to operate under proposed regulations for some limited purposes, but the legislature has provided the same authority in many other instances directly in the public act covering program changes.) While these regulations are pending -- which has gone on for extensive periods, literally years in some cases (*e.g.*, HUSKY B regulations have never been finalized) -- the pending regulations are not available to the public unless an individual knows to ask DSS for them, and DSS can modify the proposed regulations without public notice. Thus, even if a member of the public knows of proposed regulations governing a program, they cannot readily ascertain when to ask for updates.

C. Proprietary regulations should be available in an electronic publication. In addition to the special authorization provided to DSS that results in governing adopted and proposed regulations not being published in the current system, we are aware of at least one other situation in which regulations are not readily available to the public, proprietary regulations (*e.g.*, the State Building Code). These should be readily accessible to the public via electronic publication.

III. An electronic publication should provide information regarding an agency's proposed regulations and the status of such regulations as they move through the adoption process. In some cases regulations are required by statute and in other situations they are authorized but not required. Under the state's Administrative Procedure Act, regulations move through a defined adoption process (with special procedures governing emergency regulation adoption including findings that must be made). The steps in this process include: proposal of the regulation, an opportunity for public comment and to request a public hearing, review by the Attorney General, and approval by the legislature's Regulations Review committee.

A. When a statute requires adoption of regulations, an electronic reporter should include readily accessible information regarding the date by which an agency must propose regulations.

B. When regulations are proposed:

1. the full text of the proposal should be electronically available without further request. Currently notice of proposed regulations often includes only a cryptic description of the proposal and an interested party is required to formally request copies of the proposal from the agency to determine if there matters of concern.

2. information regarding the status of proposed regulations should be available electronically, including at least the following:

a. comments due dates, where comments are to be filed, and copies of filed comments;

b. hearing request information, when and where any hearing is scheduled, and records of any hearings;

c. any findings required as part the adoption process and the date of such findings;

d. any modifications of the proposed regulations and the date of such modifications;

e. the date and content of the submission to the Attorney General and the date and content of the Attorney General's review; and

f. the date and content of any submission to the legislature's Regulations Review committee, the date such committee will review the regulations and the date and content of the committee's action.

3. there should be an electronic alert system through which the public can receive automatic notices at each stage of the regulation adoption process described above.

IV. Agency websites should link items on their website to relevant regulations and proposals published in the electronic publication. Like virtually all we suggest above, this should be readily accomplished electronically, taking the mystery out of agency policy development and ensuring the public has up-to-date access to relevant information. Along the same line, it would also make sense for agencies to link items on their website to relevant statutes and adopted public acts published on the legislature's website.

It simply shouldn't be as difficult as it is – even for lawyers – to access relevant regulations or determine the content and status of proposed regulations. An electronic publication, effectively structured, can resolve much of the existing difficulty.

We would be pleased to work with the legislature to develop final legislation to accomplish development of an accessible, timely and informative electronic publication.